



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8207855

Date: JUNE 3, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

---

<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

### A. Translations

Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* In denying the petition, the Director stated that the English language translations of the Petitioner's foreign language documents were not properly certified as required by the aforementioned regulation.

The Petitioner argues on appeal that the Director erred in concluding that he had not provided properly certified English language translations of his documents. Our review of the record indicates that the Petitioner provided six Certificate(s) of Translation from Languex Translation LLC each listing multiple documents that were translated from Portuguese to English. These certificates stated: "We Languex LLC, a professional translation company, hereby certify that the above mentioned documents have been translated by experienced and qualified professional translators and that, in our best judgment the translated text truly reflects the content, meaning, and style of the original document." The aforementioned Certificates of Translation and accompanying English language translations sufficiently comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the Director's determination on this issue is withdrawn.

### B. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented his Mechanical Engineering diploma (1975) and school transcript from the Technological Institute of [REDACTED] as well as an academic credential evaluation indicating that the aforementioned diploma is the foreign equivalent of a Bachelor's degree in Mechanical Engineering from an accredited college or university in the United States. In the decision denying the petition, the Director indicated that without certified English language translations of the Petitioner's diploma and transcript, USCIS was unable to determine whether he qualified as a member of the professions holding an advanced degree. As discussed previously, the English language translations

---

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

accompanying the Petitioner's documents sufficiently comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), and therefore we withdraw the Director's determination on this issue.

In addition, the Petitioner submitted letters from employers and other corroborating evidence demonstrating that he has at least five years of progressive post-baccalaureate experience in mechanical engineering and production management to constitute the equivalent to an advanced degree in his specialty. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). He has established therefore that he qualifies for classification as a member of the professions holding an advanced degree.<sup>4</sup>

### C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The Petitioner did not execute this required document for the petition, and therefore he has not properly applied for the national interest waiver. For this reason, the Petitioner has not established eligibility for the benefit sought. Furthermore, as discussed below, we agree with the Director that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that his proposed work as an entrepreneur involves "development of his new business endeavor intended for the United States, and branded as [redacted] a fitness and sports training equipment company." He stated that "the primary product for [redacted] is that of an aerobic, strength and fitness treadmill design . . . with design enhancements made by [the Petitioner] through his technical mechanical engineering background." The Petitioner further explained that he plans to "reach across international borders through the export of his health and fitness industry product" from Brazil, "thereby expanding its positive health influences to developing countries." In addition, he asserted that his proposed endeavor stands to bolster "the U.S. Job market and economy through his success in expansion of sales, trade, and distribution. This will cause other U.S. businesses and manufacturers to benefit from its planned expansion needs."

In response to the Director's request for evidence (RFE), the Petitioner presented a "Business Plan" he developed for [redacted]<sup>5</sup> His business plan states:

[redacted] . . . will be a Florida-based company which will import fitness and training equipment designed in Brazil. The products are designed by the Brazilian affiliates' companies. Following the successful establishment of the Company's operations, it will start the design of a new product line intended for both the U.S. market and to be exported to Canada, Latin America, and the European Union.

---

<sup>4</sup> Because the Petitioner qualifies for the underlying visa classification as a member of the professions holding an advanced degree, discussion of his eligibility as an individual of exceptional ability would serve no meaningful purpose.

<sup>5</sup> The Petitioner's response also included documentation from the Florida Department of State indicating that he filed "Articles of Organization" for [redacted] on August 31, 2018. We note that the Petitioner formed this company after he filed the petition. Eligibility, however, must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

This plan includes market analyses, information about competitors, financial forecasts and projections, and a description of company management and personnel.<sup>6</sup> The Petitioner maintained that his proposed endeavor “is beyond borders, as it utilizes E-Commerce and national chain outlets through Walmart and Amazon for its sales, and wholesale distribution, as set forth in the Business Plan.” He further indicated that “his endeavors as an entrepreneur are devoted to creating jobs where none were before, and as the Business Plan projects.”

Additionally, the Petitioner pointed to the U.S. Department of State’s “National Interests and Strategic Goals” for “Economic Prosperity” which state:

To expand exports and open markets, assist American Business, foster economic growth, and promote sustainable development.

- Open Markets - Open world markets to increase trade and free the flow of goods, services and capital.
- U.S. Exports - Expand U.S. exports to \$1.2 trillion early in the 21st century.
- Global Economic Growth - Increase global economic growth and stability.
- Economic Development - Promote broad-based, sustainable growth in developing countries and transitional economies.

The Petitioner asserted that his proposed endeavor is aimed at “carrying out his goals of expansion and trade,” integrating his business with “developing countries,” and contributing to “the health and welfare of these economies through his expansion.” He contended that his undertaking involves “expanding global trade, promoting the health, welfare, and economies of developing nations and at the same time that of the United States.” He also argued that his proposed work offers “newer business opportunities through his turn-around ‘core restructurings’ he envisions to naturally flow as a direct effect from his immersion in the ‘E-Commerce’ marketplace in the United States.” The record therefore shows that the Petitioner’s proposed endeavor as a fitness products entrepreneur has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.<sup>7</sup>

---

<sup>6</sup> Regarding future staffing, the Petitioner’s business plan anticipates that [REDACTED] will have three employees in year one, four employees in year two, and ten employees in year three. In addition, his plan offers sales projections of \$449,985 in year one, \$877,477 in year two, and \$5,046,105 in year three. The Petitioner, however, does not adequately explain how these sales forecasts were calculated.

<sup>7</sup> In the present matter, the Director determined that the Petitioner had “not established that the proposed endeavor is of national importance” under *Dhanasar*’s first prong, and the Petitioner does not contest that determination on appeal.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner asserted that his endeavor offers "a high likelihood for economic success in job creation as well as revenue," he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find that the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company to impact his field, U.S. exports, public health, or the fitness industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels, business activity, and international exports stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or international trade. Accordingly, we agree with the Director that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.